

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION  
STATE OF MONTANA

\* \* \* \* \*

SHEILA M. MURPHY	)	
	)	
Petitioner,	)	OSPI 223-93
	)	
vs.	)	
	)	<b><u>ORDER</u></b>
	)	
BOARD OF TRUSTEES OF VALLEY	)	
COUNTY SCHOOL DISTRICT NO.	)	
1-1A,	)	
	)	
Respondents.	)	

\* \* \* \* \*

Sheila Murphy is appealing Valley County Superintendent Janet Allie's June 16, 1993, decision affirming the Valley County School District #1-1A's decision to terminate her.

Ms. Murphy was hired as a high school secretary in August, 1990, and worked during the 1990-91 school year. Her 1990-91 job evaluation indicated "needs improvement" in five areas (Petitioner's Exhibit 5). On October 31, 1991, the new high school principal for the 1991-92 school year told Ms. Murphy her work was unsatisfactory. On November 6, 1991, he gave her a written evaluation describing the deficiencies in her work. On November 15, 1991, he suspended her with pay and informed her of the reasons he would give the trustees for terminating her employment at their meeting on November 20, 1991.

On November 20, 1991, the trustees held a pre-termination hearing in executive session. Ms. Murphy, a union representative and school representatives attended. The Board accepted the principal's recommendation that Ms. Murphy be terminated.

Ms. Murphy appealed to the county superintendent. A de novo hearing was held on November 12-13, 1992. Following the hearing, the county superintendent issued Findings of Fact and Conclusions of Law upholding the District. Ms. Murphy appealed to this superintendent on two issues. One, Ms. Murphy did not receive due process. Two, the findings and conclusions are clearly erroneous in view of the evidence in the record.

#### STANDARD OF REVIEW

Findings of fact are reviewed to determine if they are supported by substantial, credible evidence in the record. The state superintendent may not substitute her judgment for that of a county superintendent on the weight of the evidence. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 676 P.2d 194, 198, 208 Mont. 33, 40 (1984). Conclusions of law are reviewed to determine if the interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 803 P.2d 601, 603, 245 Mont. 470, 474 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 714 P.2d 151, 153, 220 Mont. 214, 217 (1986).

#### DECISION AND ORDER

The District's procedures for handling a non-certified staff's termination meet the minimum standards of due process. There is substantial, credible evidence in the record to support the county superintendent's findings of fact. The order is AFFIRMED.

## MEMORANDUM OPINION

Due process issue. A government employee with a property interest in their employment has a Constitutional right to due process. Scott T. Medicine Horse v. Trustees, Big Horn County School District No. 27, 823 P.2d 230, 251 Mont. 65 (1991). Cleveland Bd. of Educ. v. Loudermill, 470 US 532, 105 S.Ct. 1487 (1985). As the United States Supreme Court noted in 1985, this "has been settled for some time now," Loudermill, at 1493. Ms. Murphy was a district employee with a collective bargaining agreement and a contract. She had a property interest in her employment and a right to due process that included notice and an opportunity for a meaningful pre-termination hearing.

The Loudermill Court wrote that "The essential requirements of due process . . . are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement." Loudermill at 1495. The parties agree that Ms. Murphy had a right to due process. The dispute is whether the procedures followed by the District satisfied due process.

A non-certified employee with a property interest in employment is constitutionally entitled to (1) notice of the employer's intention to terminate, including the reasons for the termination; (2) notice of an opportunity for a pre-termination hearing at which the employee may present reasons why the termination should not occur; and, (3) a post termination hearing.

Due process can be met with oral notice of the reasons for

termination and of a pre-termination hearing. Oral notice does not satisfy the statutory requirements for terminating certified staff. Sections 20-4-204, 20-4-206 and 20-4-207, MCA, require written notice but Ms. Murphy was not a teacher.

The District's steps to terminate Ms. Murphy, while not well documented, met minimum due process requirements. The District's evidence established that it satisfied due process. It gave oral notice of its evidence of the reasons to terminate and of the pre-termination hearing.

The testimony and exhibits show that Ms. Murphy had oral and written warnings. She had actual knowledge of the problems and knew the District intended to terminate her if her work did not improve. The record shows that Ms. Murphy's 1990-91 job evaluation indicated "needs improvement" in five areas (Petitioner's Exhibit 5). In the fall of the 1991-92 school year errors were made in the school office. The number and significance of the errors and responsibility were disputed, but Ms. Murphy's own testimony establishes she had actual knowledge that the school administrative staff was not satisfied with her work.

She testified that on October 31, 1991, the principal told her that her work was unsatisfactory (TR 232-235). She testified (TR 240-250) that on November 6, 1991, he gave her a written evaluation describing the deficiencies in her work (Petitioner's Exhibit 4). This stated she would have two weeks to improve. She testified (TR 262-269) that on November 15, 1991, her supervisor told her he was not satisfied that her performance had improved.

Ms. Murphy argues that she did not have notice of what evidence the District was going to offer at the hearing. She did not have written notice but she had oral notice. Her testimony establishes she knew what the principal was going to offer as evidence of her poor job performance at the pre-termination hearing.

She testified that at the November 15, 1991, meeting, the principal went over fourteen "items" with her (TR 264). She was asked "So he wanted to go through his list of problems?" and she answered "Yes" (TR 265). She testified that she had "a chance to respond" and she knew "there was a threat of the job" (TR 266). She testified that at the end of the meeting "he stated to me that he would suspend me" (TR 268).

On November 15, 1991, the principal suspended her with pay and informed her that he would recommend to the trustees that they terminate her at the November 20th meeting of the School Board. The District did not give her written notice but Ms. Murphy's testimony shows she had actual knowledge of the pre-termination hearing (TR 269). Testimony shows she knew she had the opportunity to prepare, to have representation at the hearing and to offer evidence (TR 270-275). There is no record of the pre-termination hearing but the County Superintendent's record establishes that Ms. Murphy attended the pre-termination hearing and had a union representative with her.

Oral warnings and notice are legally sufficient for non certified staff but are difficult to establish, as shown by the two

day hearing in this case. If the District's evaluation and termination procedures had included written warnings and notice some of the issues on appeal would have been avoided.

Findings of fact. The state superintendent may not substitute her judgment for that of a county superintendent as to the weight of the evidence on questions of a fact. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." State Compensation Mutual Insurance Fund v. Lee Rost Lossing, 252 Mont. 97, at 102, 827 P.2d 85, at 88 (1992).


The record in this case contains substantial, credible evidence to support the county superintendent's finding that the District had cause to terminate Ms. Murphy. The vice-principal testified about the problems with her work (TR 430-535) and the county superintendent believed her.

There was evidence that Ms. Murphy failed to send out reports to parents (TR 435), made mistakes that violated confidentiality (TR 436), had trouble following directions (TR 439), made errors on transcripts of grades (TR 441, 442, 445) did not prioritize her work (TR 458), made numerous errors in working with student attendance records (TR 462-463) and university correspondence (Tr 470). Ms. Murphy offered contrary testimony but the county superintendent found the vice-principal credible.

The Superintendent affirms the County Superintendent's

decisions because the District met the minimum requirements of due process and there is substantial, credible evidence in the record to support the finding of good cause to terminate.

DATED this 6 day of March, 1995.

  
NANCY KEENAN

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**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on this 7<sup>th</sup> day of March, 1995, a true and exact copy of the foregoing Order was mailed, postage prepaid, to the following:

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